

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PAMELA BOYER

Appeal 2006-3440
Application 09/639,055
Technology Center 3600

Decided: June 29, 2007

Before TERRY J. OWENS, JENNIFER D. BAHR, and STUART S. LEVY,
Administrative Patent Judges.

OWENS, *Administrative Patent Judge.*

DECISION ON APPEAL

The Appellant appeals from a rejection of claims 1-4, 22, and 23, which are all of the pending claims.

THE INVENTION

The Appellant claims a safety harness that includes a resilient suspender

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assembly and has shoulder straps with a resilient, stretchable shoulder portion between nonresilient portions. Claim 1 is illustrative:

1. A safety harness, comprising:

a body harness assembly positionable on a user's body, the body harness assembly comprising a left shoulder strap and a right shoulder strap, said shoulder straps crossing in a back side of the body harness, while sliding through a lanyard securing member;

a resilient suspender assembly having a first branch and a second branch, a front end of the first branch being fixedly attached to the left shoulder strap, a front end of the second branch being fixedly attached to the right shoulder strap, a back end of the first branch and a back end of the second branch being fixedly attached to the lanyard securing member positioned centrally with respect to the left shoulder strap and the right shoulder strap on the back side of the body harness;

said left shoulder strap and said right shoulder strap each having a first non-resilient portion configured to extend from about a waistline of a user to about a shoulder level of the user, a second resilient stretchable portion co-extensively fixedly attached to the first portion and configured to extend over a shoulder of the user and a third non-resilient portion co-extensively fixedly attached to the second portion and configured to extend along a back of the user to about the waistline of the user.

THE REFERENCES

Dennington	US 5,487,444	Jan. 30, 1996
Cox	US 6,006,700	Dec. 28, 1999

THE REJECTION

Claims 1-4, 22 and 23 stand rejected under 35 U.S.C. § 103 as being unpatentable over Dennington in view of Cox.¹

OPINION

We affirm the aforementioned rejection.

Claims 1 and 2

Dennington discloses a safety harness (12) comprising a body harness having left and right shoulder straps (36, 38) that cross on the back side of the body harness while sliding through a lanyard (22) securing member (D-ring 44, securing the lanyard via elastomeric cord assembly 18 and fail-safe lanyard 88) (col. 3, ll. 8-9, 45-52, 55-60; fig. 3). The safety harness “may be constructed from leather, nylon webbing, or other strong, flexible material” (col. 3, ll. 1-3).

Cox discloses a safety harness (10) having left and right shoulder straps (20, 30) (col. 3, ll. 11-13). At least a portion of each strap is extendable elastically at least 3% under a tensile load of approximately 20 pounds to facilitate movement of a user within the safety harness (col. 1, ll. 41-46). The elastic material greatly reduces, if not eliminates, the problems of limited motion and associated fatigue, provides a snug fit without restricting movement, eliminates the need for frequent readjustment of the fit, and prevents sections of the strap portion from hanging away from the user’s body and snagging (col. 2, ll. 4-20). Regarding the strap, Cox discloses (col. 4, ll. 54-64):

¹ The Appellant addresses a rejection under 35 U.S.C. § 112, second paragraph (Br. 5-6), but that rejection has been withdrawn (Advisory Action mailed Nov. 6, 2001).

To provide the unique combination of elastic and tensile load characteristics of the strap portions of the present safety harness, a composite material comprising at least one elastic material and at least one relatively non-elastic, high strength material is preferably used. The entire strap portion can be fabricated from such a composite material or just a portion or section of the strap portion can be fabricated from such a composite material. For example, a section of such an elastic material may be sewn into a strap portion otherwise fabricated from conventional, non-elastic materials such as nylon and/or polyester.

In one embodiment the strap portion comprises an inelastic, high strength strap (102) having stitched to its interior an elastic strap (104) that provides a snug fit with the user's shoulder (col. 6, ll. 53-65; fig. 4B).

The Appellant argues, in reliance upon column 4, lines 61-67 of Cox, that Cox's strap has a section of elastic material sewn into an inelastic material (Br. 7). That is comparable to the Appellant's strap having a resilient shoulder portion between two nonresilient portions. In the embodiment wherein an elastic portion is stitched to the interior of an inelastic portion, Cox discloses forming a snug fit between the elastic portion and the user's shoulder (col. 6, ll. 61-63). That disclosure would have led one of ordinary skill in the art, through no more than ordinary creativity, to place the elastic portion referred to in column 4, lines 58-64 at the shoulder area between inelastic portions to provide a snug, comfortable fit with the shoulder. *See KSR Int'l. Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (2007) (In making the obviousness determination one "can take account of the inferences and creative steps that a person of ordinary skill in the art would employ."). For that reason the Appellant's argument that it would

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not have been obvious in view of the applied references to place an elastomeric resilient portion adjacent an apex of each shoulder strap as required by the Appellant's claim 2 (Br. 8) is not persuasive.

The Appellant argues that "the state of the art teaches either totally non-stretchable or composite material harnesses" (Br. 8). That argument is not well taken in view of Cox's disclosures that 1) a portion of a strap can be fabricated from a composite of elastic and inelastic material, the rest of the strap being inelastic (col. 4, ll. 58-64), and 2) an elastic portion can be sewn into the interior of an inelastic strap (col. 6, ll. 53-59).

Claims 3, 22 and 23

The Appellant argues that it would not have been obvious in view of the applied prior art to attach a suspender assembly to shoulder straps below a resilient portion thereof (Br. 9-10). Dennington's suspender assembly, the Appellant argues, is threaded through D-rings. *See id.* That argument is not convincing in view of Cox's disclosure of attaching elastic material to inelastic material by sewing or stitching (col. 4, ll. 58-64; col. 6, ll. 53-59). That disclosure would have indicated, to one of ordinary skill in the art, that sewing Dennington's elastic suspender to the inelastic portion of an elastic/inelastic strap of the type disclosed by Cox (where the attachment would be more secure than attachment to the strap's elastic portion) is an alternative to Dennington's attachment using rings (figs. 1-3, 6-8).

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Claim 4

The Appellant argues that Cox does not disclose a waistline belt and that Dennington's shoulder straps connect to leg straps rather than to Dennington's waistline belt (Br. 10). As shown in Dennington's figures 6-8, the shoulder straps can terminate at the belt as required by the Appellant's claim 4.

For the above reasons we are not convinced of reversible error in the Examiner's rejection.

DECISION

The rejection of claims 1-4, 22, and 23 under 35 U.S.C. § 103 over Dennington in view of Cox is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

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